

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

RICHARD MARTINEZ,

Plaintiff,

v.

No. CIV-05-0673 MCA/WDS

N.M. STATE SENATE, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

This matter is before the Court *sua sponte* to consider Plaintiff's motion for leave to proceed pursuant to 28 U.S.C. § 1915 (Doc. #2) filed June 16, 2005. For the reasons below, the leave sought will be denied.

Plaintiff has filed numerous actions in this Court, at least three of which have been dismissed for failure to state a claim upon which relief can be granted. *Martinez v. N.M. Parole Bd*, No. CV 90-0073 JC; *Martinez v. Mondragon*, No. CV 91-1190 LH/JHG; *Martinez v. Perry*, No. CV 02-0175 MCA/RLP. *See Duhart v. Carlson*, 469 F.2d 471, 473 (10th Cir. 1972) (a court may take judicial notice of its own records).

The provisions of 28 U.S.C. § 1915 prohibit inmate-plaintiffs from filing successive or repetitious actions in forma pauperis. The pertinent subsection reads:

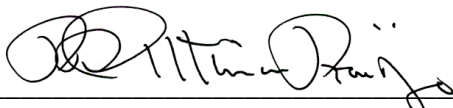
In no event shall a prisoner bring a civil action . . . under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action . . . that was dismissed on the grounds that it . . . fails to state a claim . . . , unless the prisoner is under imminent danger of serious physical injury.

§ 1915(g). Plaintiff's complaint has been preceded by the requisite number of dismissals and does not allege imminent danger of serious physical injury. Under the factors specified in § 1915(g), the

motion for leave to proceed pursuant to 28 U.S.C. § 1915 must be denied and the filing fee paid. *See Pigg v. FBI*, 106 F.3d 1497 (10th Cir. 1997); *White v. Colorado*, 157 F.3d 1226, 1234 (10th Cir. 1998) (upholding constitutionality of “three strikes” provisions in § 1915(g)), *cert. denied*, 526 U.S. 1008 (1999); *Schlicher v. Thomas*, 111 F.3d 777, 781 (10th Cir. 1997). Failure to submit the statutory filing fee may result in dismissal without further notice; the Court will not review the merits of the complaint or issue summons unless the filing fee is paid.

IT IS THEREFORE ORDERED that Plaintiff’s motion for leave to proceed pursuant to 28 U.S.C. § 1915 (Doc. #2) filed June 16, 2005, is DENIED;

IT IS FURTHER ORDERED that, within 20 days from entry of this order, Plaintiff may submit the required filing fee of \$250.00.


UNITED STATES DISTRICT JUDGE